

SENATE BILL NO. 294

INTRODUCED BY D. HARRINGTON

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A BILL FOR AN ACT ENTITLED: "~~AN ACT CLARIFYING THE CIRCUMSTANCES UNDER WHICH AN AGENCY OF THE STATE MAY BE APPOINTED AS A GUARDIAN;~~ CLARIFYING THE RESPONSIBILITY OF AN AGENCY OF THE STATE APPOINTED AS A GUARDIAN; AND AMENDING ~~SECTIONS~~ SECTION 72-5-312 AND ~~72-5-317~~, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 72-5-312, MCA, is amended to read:

**"72-5-312. Who may be guardian -- priorities.** (1) Any competent person or a suitable institution, association, or nonprofit corporation or any of its members may be appointed guardian of an incapacitated person.

(2) Persons who are not disqualified have priority for appointment as guardian in the following order:

(a) a person, association, or private, nonprofit corporation nominated by the incapacitated person; if the court specifically finds that at the time of the nomination the incapacitated person had the capacity to make a reasonably intelligent choice;

(b) the spouse of the incapacitated person;

(c) an adult child of the incapacitated person;

(d) a parent of the incapacitated person, including a person nominated by will or other writing signed by a deceased parent;

(e) any relative of the incapacitated person with whom ~~he~~ the incapacitated person has resided for more than 6 months prior to the filing of the petition;

(f) a relative or friend who has demonstrated a sincere, longstanding interest in the welfare of the incapacitated person;

(g) a private association or nonprofit corporation with a guardianship program for incapacitated persons, a member of ~~such~~ the private association or nonprofit corporation approved by the association or corporation to act as a guardian for the incapacitated person, or a person included on an official list of ~~such~~ the association or organization as willing and suitable to act as guardian of incapacitated persons;

1 (h) a person nominated by the incapacitated person who is caring for ~~him~~ the incapacitated person or  
 2 is paying benefits to him the incapacitated person.

3 (3) The priorities established in subsection (2) are not binding, and the court shall select the person,  
 4 association, or nonprofit corporation that is best qualified and willing to serve.

5 (4) Except as provided in subsection (5), the court may not appoint a person, institution, association, or  
 6 nonprofit corporation to be the guardian of an incapacitated person if the person, institution, association, or  
 7 nonprofit corporation:

8 (a) provides or is likely to provide during the guardianship substantial services to the incapacitated  
 9 person in the professional or business capacity other than in the capacity of guardian;

10 (b) is or is likely to become during the guardianship period a creditor of the incapacitated person, other  
 11 than in the capacity of guardian;

12 (c) has or is likely to have during the guardianship period interests that may conflict with those of the  
 13 incapacitated person; or

14 (d) is employed by a person, institution, association, or nonprofit corporation ~~who or which~~ that would  
 15 be disqualified under subsections (4)(a) through (4)(c).

16 (5) ~~If~~ Subject to subsection (6), if the court determines that there is no qualified person willing and able  
 17 to serve as guardian, the court may appoint an agency of the state or federal government that is authorized or  
 18 required by statute to provide services to the person or to persons suffering from the kind of disability from which  
 19 the incapacitated person is suffering or a designee of the agency, ~~notwithstanding the provisions of subsection~~  
 20 ~~(4). Whenever~~ If an agency is appointed guardian, the court may also appoint a limited guardian to represent a  
 21 specified interest of the incapacitated person. ~~Whenever~~ If a limited guardian is appointed pursuant to this  
 22 subsection, the specified interest of the incapacitated person is the sole responsibility of the limited guardian and  
 23 is removed from the responsibility of the agency.

24 ~~(6) (a) The court may not appoint an agency of the state as guardian without the agency's consent.~~

25 ~~(b)~~ (6) An agency of the state named as guardian is not:

26 (i)(A) legally obligated to provide funds for the incapacitated person; or

27 (ii)(B) liable to third persons for acts of the incapacitated person during the guardianship."

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29 ~~Section 2. Section 72-5-317, MCA, is amended to read:~~

30 ~~"72-5-317. Temporary guardians. (1) If an incapacitated person has no does not have a guardian and~~

1 an emergency exists, the court may exercise the power of a guardian pending notice and hearing.

2 ——— (2) If an appointed guardian is not effectively performing his the guardian's duties or if there is no  
 3 appointed guardian and the court further finds that the welfare of the incapacitated person requires immediate  
 4 action, it may, with or without notice, appoint a temporary guardian for the incapacitated person for a specified  
 5 period not to exceed 6 months. The court may appoint either a full or a limited temporary guardian, depending  
 6 on the needs and circumstances of the incapacitated person. The court may not invest a temporary guardian with  
 7 more powers than are required by the circumstances necessitating the appointment. The order of appointment  
 8 of a temporary guardian shall must state whether a full or limited temporary guardianship is being created and,  
 9 in the case of a limited temporary guardian, the specific powers and duties of the limited temporary guardian.

10 ——— (3) In case If there is no person available and willing to act as temporary guardian for an incapacitated  
 11 person who is in need of a temporary guardian except a person or entity who is ineligible to act as guardian  
 12 pursuant to the provisions of 72-5-312(4), the court may appoint as temporary guardian a person or entity who  
 13 that would otherwise be ineligible under that provision subsection to act as guardian. This subsection does not  
 14 permit the appointment of a person or entity who that has an actual conflict of interest in regard to the purpose  
 15 for which the temporary guardianship is sought. The court may not appoint an agency of the state without the  
 16 agency's consent. A temporary guardian who is otherwise ineligible shall serve until a an eligible person or entity  
 17 who is not ineligible to serve as guardian and who is otherwise qualified to be guardian is appointed by the court  
 18 to act as temporary guardian, but in no case may he not serve for longer than 6 months.

19 ——— (4) A temporary full guardian is entitled to the care and custody of the ward, and the authority of any  
 20 permanent guardian previously appointed by the court is suspended so as long as a temporary guardian has  
 21 authority. A temporary limited guardian is entitled to exercise such the powers as that are specifically granted to  
 22 him in the order of appointment, and the power of any permanent guardian previously appointed by the court to  
 23 exercise those powers is suspended so as long as the temporary limited guardian has authority. The court by  
 24 specific order may suspend all authority of the permanent guardian upon appointment of a temporary limited  
 25 guardian. A temporary guardian may be removed at any time. A temporary guardian shall make any report the  
 26 court requires. In other respects, the provisions of this code concerning guardians apply to temporary guardians."

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28 **NEW SECTION. Section 2. Saving clause.** [This act] does not affect rights and duties that matured,  
 29 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

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